

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

June 6, 2007

Dear Xxxxx:

This letter is in response to INDIVIDUAL's letter dated September 15, 2006, and your letter dated February 16, 2007 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to request guidance on the sales tax treatment of separately stated delivery charges on sales of 'central-mix concrete'. Our question is: Are separately stated delivery charges of central-mix concrete not subject to Illinois sales tax as 'separately stated for' delivery charges under Illinois Regulation, 86 Ill. Adm. Code 130.415?

Unlike the traditional 'transit-mix concrete' sold by traditional ready-mix concrete companies, which requires a concrete-mixing truck to mix the concrete enroute to the construction site, central-mix concrete no longer needs the ready mix company's concrete-mixer truck for delivery. Central-mix concrete remains in its 'plastic' form from our client's plant to the customer's construction site regardless of mode of delivery. Transit-mix concrete is called that because the dry ingredients are loaded into a concrete-mixer truck and the water is added to the truck. The concrete is then actually mixed as the truck delivers the concrete. On the other hand, central-mix concrete is fully mixed at the plant. Central-mix concrete is ready for immediate application as soon as it is dispensed.

Because the central-mix concrete is mixed and ready for application when the concrete leaves the plant, the concrete can be transported in any type of container (such as a bucket or tub) and by any type of vehicle chosen by the customer. The customer has

three options for delivery: (1) picking up the concrete from the plant in their own vehicle (such as a pick up truck, dump truck or other type of truck), (2) contracting with a third party to deliver the concrete or (3) requesting delivery from the seller (i.e., my client). Customers have utilized all three options. The delivery options available have made the central-mix concrete product very popular with purchasers.

Illinois Regulation 86 Ill. Adm. Code 130.415, address the sales tax treatment of delivery charges. It states in pertinent part:

d) If the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the 'selling price' of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. To the extent that such charges exceed the costs of shipping, transportation or delivery, the charges are subject to tax. The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. (Emphasis added)

Applying the above rule to sales of central mix concrete sales tax should not be imposed on delivery charges as the customer has the option of taking delivery at the seller's location or having the seller deliver the central-mix concrete for an additional charge.

In conclusion, provided the requirements of 86 Ill. Adm. Code 130.415 are met, our understanding is that, sales tax would not be imposed on delivery charges for sales of central-mix concrete. As stated above central-mix concrete can be picked up by the customer at the seller's location, delivery by the seller is not required. We understand that the delivery charge must be 'separately contracted for' and must be separately stated on the invoice. Also, such charges must approximate the cost of delivery for this regulation to apply.

Please confirm that our understanding is correct, or provide the basis for a different conclusion.

If you have any further questions, I can be reached at #. Thank you for your assistance in getting this issue resolved.

DEPARTMENT'S RESPONSE:

We cannot provide you with the determination you have requested without reviewing the contracts your client may have with its customers for the sale and delivery of the central-mix concrete. Reviews of such contracts for providing binding responses from the Department are only available in the context of Private Letter Rulings described previously in this letter.

As noted in your request, the Department's administrative rule regarding transportation or delivery charges provide that if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.415(d).

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price of the property is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, is generally sufficient to make a determination that the transportation or delivery charges were agreed to separately and apart from the selling price of the property. See 86 Ill. Adm. Code 130.415(d). The determination that a retailer's customers may have the option of picking up the property at the retailer's location as described above is subject to any other information or documentation that may conflict with this information.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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